

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 529

AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-22.6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 22.6. Pipeline Construction Guidelines

Sec. 1. (a) This chapter applies to the construction of any segment of an interstate pipeline on privately owned land in Indiana.

(b) Except as otherwise provided in the guidelines adopted by the division, this chapter does not apply to construction activities that occur entirely on:

- (1) a public right-of-way;**
- (2) a railroad right-of-way; or**
- (3) publicly owned land.**

Sec. 2. As used in this chapter, "affected landowner" means an owner of an interest in property that:

- (1) is located in Indiana; and**
- (2) meets one (1) or more of the conditions set forth in 18 CFR 157.6(d)(2).**

Sec. 3. (a) As used in this chapter, "construction" means the physical work involved in the construction, reconstruction, improvement, maintenance, or extension of a pipeline project.

(b) The term includes the following:

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- (1) The preparation of the construction site.
- (2) Disassembling and removing a structure.
- (3) Related work.

Sec. 4. As used in this chapter, "division" refers to the pipeline safety division of the Indiana utility regulatory commission established by IC 8-1-22.5-2.

Sec. 5. As used in this chapter, "guidelines" refers to a nonrule policy document adopted by the division that establishes voluntary guidelines to be considered by a pipeline company that proposes to construct a pipeline that will be located, in whole or in part, in Indiana.

Sec. 6. As used in this chapter, "pipeline" means a pipeline (as defined in IC 8-1-22.5-1(c)) that crosses or is located in:

- (1) Indiana; and
- (2) one (1) or more other states.

Sec. 7. (a) As used in this chapter, "pipeline company" means a person (as defined in IC 8-1-22.5-1(e)) that:

- (1) constructs; or
- (2) proposes to construct;

a pipeline.

(b) The term includes any:

- (1) employee;
- (2) agent;
- (3) contractor;
- (4) subcontractor; or
- (5) other person;

that is employed by, or acts on behalf of, a pipeline company.

Sec. 8. (a) The division shall establish voluntary guidelines to be considered by a pipeline company that proposes to construct a pipeline that will be located, in whole or in part, in Indiana.

(b) Guidelines adopted by the division are not binding on any pipeline company or affected landowner but may be used by a pipeline company or an affected landowner to simplify negotiations involved in establishing a price for any:

- (1) easement; or
- (2) other interest in land;

needed by the pipeline company to construct a pipeline.

Sec. 9. (a) For purposes of this section, a pipeline company proposes to construct a pipeline in Indiana if it does any of the following:

- (1) Files an application for a certificate of public convenience and necessity with the Federal Energy Regulatory

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Commission.

(2) Undertakes:

- (A) environmental, engineering, or cultural surveys; or**
- (B) other studies or surveys;**

in Indiana in preparation for filing an application described in subdivision (1).

(3) Holds public meetings or hearings in Indiana concerning a proposed pipeline.

(4) Enters upon land in Indiana for the purpose of determining the route or location of a proposed pipeline.

(5) Contacts landowners in Indiana for the purpose of negotiating the price for:

- (A) easements; or**
- (B) other interests in land;**

necessary for the construction of a pipeline.

(6) Undertakes other actions in preparation for the construction of a pipeline.

(b) The division shall send, by certified mail, the following to each pipeline company that proposes to construct a pipeline in Indiana:

(1) A copy of the guidelines adopted by the division.

(2) A notice that includes the following:

(A) A statement that the division has adopted the pipeline construction guidelines included with the notice.

(B) A statement indicating:

(i) that the pipeline construction guidelines have been mailed to all affected landowners on the list provided by the pipeline company under section 10 of this chapter; and

(ii) that the division has encouraged the affected landowners to agree to the guidelines in any negotiations for easements or other land interests with the pipeline company.

(c) The division shall mail the guidelines and notice in accordance with subsection (b):

(1) as soon as the division learns of the proposed pipeline as a result of the pipeline company performing one (1) or more actions described in subsection (a); or

(2) not later than three (3) business days after the Federal Energy Regulatory Commission provides notice under 18 CFR 157.9(a) of the pipeline company's application for a certificate of territorial authority;

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whichever occurs earlier.

Sec. 10. (a) The pipeline company shall provide the division with a list of landowners that will be affected by the proposed construction of a pipeline or a segment of a pipeline in Indiana. The list must include all affected landowners that the pipeline company must provide notice to under IC 32-24-1-3(g).

(b) The division shall send, by certified mail, the following to each affected landowner:

(1) A copy of, or reference to, the guidelines adopted by the division.

(2) A notice that includes the following:

(A) A statement that the division has adopted the pipeline construction guidelines included with, or referenced in, the notice.

(B) A statement indicating that the pipeline construction guidelines have been mailed to the pipeline company.

The statement required by this clause must specify a date after which the affected landowner may contact a toll free telephone number established by the division to provide information on the status of any construction guidelines agreed to by the pipeline company.

(C) A statement indicating that any guidelines agreed to by the pipeline company shall not be binding on the pipeline company or affected landowners but may be used by the pipeline company and an individual landowner to simplify negotiations involved in establishing a price for any:

(i) easement; or

(ii) other interest in land;

needed by the pipeline company to construct the pipeline.

(D) A statement encouraging the affected landowner to agree to any construction guidelines that the pipeline company agrees to follow, to the extent that the landowner determines that the guidelines are not contrary to the landowner's best interests.

(E) A statement including:

(i) contact information for the one (1) or more project coordinators designated by the division under section 12 of this chapter;

(ii) contact information for the Federal Energy Regulatory Commission, including a local or toll free telephone number; and

(iii) the commission's web site address.

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(c) The division shall mail the information required under subsection (b) not later than twenty (20) days after the division is notified by the pipeline company of the proposed route and is provided with a list of the affected landowners as required by subsection (a).

Sec. 11. The division shall encourage pipeline companies to use the guidelines as a starting point for any negotiations with the various state agencies identified in the guidelines. The division may require a pipeline company proposing to construct a pipeline or a segment of a pipeline to sign a statement indicating whether or not the pipeline company agrees to use the guidelines for the project.

Sec. 12. For each proposed or ongoing pipeline project in Indiana, the director of the division shall designate one (1) or more employees of the division to serve as project coordinators for the division. The director shall ensure that one (1) or more of the coordinators designated under this section are responsible for the following duties concerning the project:

- (1) Monitoring all:
 - (A) filings with; and
 - (B) proceedings before;
 the Federal Energy Regulatory Commission.
- (2) Attending all public hearings or meetings concerning the project that are held in Indiana.
- (3) Receiving and responding to questions and complaints about the project from Indiana residents.
- (4) Updating the information required to be made available on the commission's web site under section 13 of this chapter.
- (5) Any other duties assigned by the director of the division.

Sec. 13. (a) The division shall make the following available on the commission's web site:

- (1) A link to the guidelines adopted by the division.
- (2) For each proposed or ongoing pipeline construction project in Indiana, the following information:
 - (A) A description of the pipeline company and the pipeline project, including:
 - (i) the pipeline's location, purpose, and construction schedule; and
 - (ii) the docket number assigned to the project by the Federal Energy Regulatory Commission.
 - (B) Contact information for the pipeline company, including a local or toll free telephone number.
 - (C) Contact information for the Federal Energy

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Regulatory Commission, including a local or toll free telephone number.

(D) Contact information for the one (1) or more project coordinators designated under section 12 of this chapter to receive and respond to questions and complaints from Indiana residents.

(E) Information on public hearings or meetings that are scheduled in connection with the pipeline project.

(F) Other information concerning the pipeline project that the division considers relevant or of likely concern to Indiana residents.

(b) The division shall update the information required under subsection (a)(1) whenever:

(1) one (1) or more guidelines adopted by the division are revised or superseded by the division; or

(2) one (1) or more new guidelines are adopted by the division.

(c) The division shall update the information required under subsection (a)(2) on a regular basis throughout the course of a pipeline project. The division shall ensure that all information on the division's web site concerning a pipeline project is accurate, current, and accessible. The director of the division shall assign the responsibility of complying with this subsection to one (1) or more project coordinators designated under section 12 of this chapter.

SECTION 2. IC 32-24-1-3, AS AMENDED BY P.L.163-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Except as provided in subsection (g), before proceeding to condemn, the person:

(1) may enter upon any land to examine and survey the property sought to be acquired; and

(2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

(1) Establishing a proposed purchase price for the property.

(2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.

(3) Conducting good faith negotiations with the owner of the property.

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(d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(e) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(f) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired.

(g) This subsection applies to a public utility (as defined in IC 32-24-1-5.9(a)) or a pipeline company (as defined in IC 8-1-22.6-7). If a public utility or a pipeline company seeks to acquire land or an interest in land under this article, the public utility or pipeline company may not enter upon the land to examine or survey the property sought to be acquired unless either of the following occur:

(1) The public utility or the pipeline company sends notice by certified mail to the affected landowner (as defined in IC 8-1-22.6-2) of the public utility's or the pipeline company's intention to enter upon the landowner's property for survey purposes. The notice required by this subdivision must be mailed not later than fourteen (14) days before the date of the public utility's or the pipeline company's proposed examination or survey.

(2) The public utility or the pipeline company receives the landowner's signed consent to enter the property to perform the proposed examination or survey.

An affected landowner may bring an action to enforce this subsection in the circuit court of the county in which the landowner's property is located. A prevailing landowner is entitled to the landowner's actual damages as a result of the public utility's or the pipeline company's violation. In addition, the court may award a prevailing landowner reasonable costs of the action and attorney's fees.

SECTION 3. [EFFECTIVE UPON PASSAGE] (a) The definitions in IC 8-1-22.6, as added by this act, apply throughout this SECTION.

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(b) Not later than September 1, 2007, the division shall publish a nonrule policy document in the Indiana Register that establishes voluntary guidelines to be considered by a pipeline company that proposes to construct a pipeline that will be located, in whole or in part, in Indiana. The division shall consider including, but not be limited to including, the following topics in the nonrule policy document:

- (1) Minimum depth for burying pipeline based on topography and use of land.
- (2) Replacing topsoil and subsoil removed during excavation or construction, or both, on agricultural land and other land.
- (3) Removal of construction debris from topsoil and landowner property.
- (4) Prevention of topsoil erosion.
- (5) Alleviation of topsoil compaction.
- (6) Prevention and remediation of damages to underground drainage tile during construction and future maintenance.
- (7) Restoring land to preconstruction condition (elevation and contour).
- (8) Compensating landowners for property damage due to pipeline construction or maintenance.
- (9) Providing advance notice before pipeline companies enter private property for inspection, construction, or maintenance.
- (10) Indemnification of landowners against damages caused by pipeline company construction, maintenance, operation, repair, or use of the pipeline on the landowner's property, except for claims or damages arising from the negligent, intentional, or willful acts or omissions of the landowner.
- (11) Providing a list of the designated state agencies that will be working with the pipeline company on the various aspects of the pipeline company's application to obtain a Certificate of Public Convenience and Necessity from the Federal Energy Regulatory Commission.

(c) The division shall develop the guidelines through a public process. Notice must be published in the Indiana Register and all interested parties must have an opportunity to comment on the proposed guidelines.

(d) In adopting the guidelines under this SECTION, the division may consult with other states, or agencies of other states, that have adopted similar guidelines for the construction of pipelines. The division may also consult with any of the following:

- (1) Other state agencies in Indiana.

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(2) Any political subdivisions in Indiana in which pipelines are located or proposed to be located.

(3) Public utilities, municipally owned utilities, or cooperatively owned utilities.

(4) Pipeline companies.

(5) Organizations representing agricultural interests in Indiana.

(6) Other individuals or organizations that have an interest in, or are knowledgeable about, pipelines or pipeline construction.

(e) Notwithstanding IC 8-1-22.6, as added by this act, a provision of IC 8-1-22.6, as added by this act, that imposes a duty related to the guidelines developed under this SECTION applies to pipeline companies and the division only after the finally adopted guidelines are published in the Indiana Register.

(f) This SECTION expires September 1, 2007.

SECTION 4. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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